

*Letter*

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SEP 21 1978  
Date  
Fee \$ 50.00  
ICC Washington, D. C.

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SEP 21 1978 - 1 42 03  
INTERSTATE COMMERCE COMMISSION

**ITEL**  
CORPORATION  
TRANSPORTATION SERVICES GROUP

September 18, 1978

Hon. H. G. Homme  
Secretary  
Interstate Commerce Commission  
Washington, D. C. 20423

Dear Sir:

Enclosed for filing with and recording by the Interstate Commerce Commission are six counterparts of a Lease Agreement dated as of September 1, 1978 between Itel Corporation, acting through its Rail-Intermodal Division, Two Embarcadero Center, San Francisco, California, 94111, and Providence and Worcester Company, 1 Depot Square, Woonsocket, Rhode Island, 02895, covering the following railroad equipment:

50 70-ton, flush deck flatcars (AAR Mechanical Designation TOFC/COFC), bearing the identifying numbers PW 105001 through PW 105050, both inclusive. Identifying marks on all of the foregoing equipment: The words, "PROPERTY OF AND LEASED FROM PITTSBURGH NATIONAL BANK SUBJECT TO AN AGREEMENT FILED UNDER THE INTERSTATE COMMERCE ACT, SECTION 20c," printed on each side of each unit.

100 70-ton, flush deck flatcars (AAR Mechanical Designation TOFC/COFC), bearing the identifying numbers PW 105051 through PW 105150, both inclusive. Identifying marks on all of the foregoing equipment: The words, "OWNED BY A BANK OR TRUST COMPANY UNDER A SECURITY AGREEMENT FILED UNDER THE INTERSTATE COMMERCE ACT, SECTION 20c," printed on each side of each unit.

50 70-ton, flush deck flatcars (AAR Mechanical Designation TOFC/COFC), bearing the identifying numbers PW 105151 through 105200, both inclusive. Identifying marks on all of the foregoing equipment: The words, "WELLS FARGO TRANSPORT LEASING CORPORATION, OWNER AND LESSOR UNDER A LEASE FILED WITH THE INTERSTATE COMMERCE COMMISSION," printed on each side of each unit.

600 70-ton, flush deck flatcars (AAR Mechanical Designation TOFC/COFC), bearing the identifying numbers PW 105201 through 105800, both inclusive. Identifying marks on the foregoing equipment to be determined and filed with the Interstate Commerce Commission at a later date.

Also enclosed is our check in the amount of \$50, payable to the Interstate Commerce Commission, being the prescribed fee for filing and recording the foregoing document.

*Overlypt*

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SEP 21 12 52 PM '78  
FEE OFFERED  
I.C.C.

TWO EMBARCADERO CENTER • SAN FRANCISCO, CALIFORNIA 94111 • (415) 955-0123

SSI RAIL

SSI NAVIGATION

SSI CONTAINER

H. G. Homme  
September 18, 1978  
Page 2.

Please return all additional copies of the enclosed counterparts not required by the Interstate Commerce Commission to David Schwartz, Esq., of Sullivan and Worcester, who will be delivering this letter on our behalf.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Paul M. Willard", with a stylized, cursive flourish at the end.

Paul M. Willard  
Counsel

**Interstate Commerce Commission**  
**Washington, D.C. 20423**

9/21/78

OFFICE OF THE SECRETARY

**Paul M. Willard, Counsel**  
**Itel Corporation**  
**Two Embarcadero Center**  
**San Francisco, Calif. 94111**

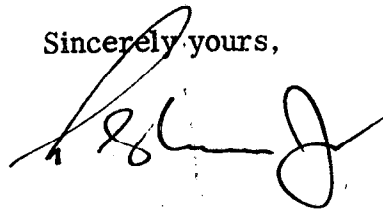
**Dear Sir:**

The enclosed document(s) was recorded pursuant to the  
provisions of Section 20(c) of the Interstate Commerce Act,

49 U.S.C. 20(c), on 9/21/78 at 1:00pm ,

and assigned recordation number(s) 8799-F, 8799-G, 8799-H, 8799-I  
9700 8799-J

Sincerely yours,



H.G. Homme, Jr.,  
Acting Secretary

Enclosure(s)

SE-30-T  
(2/78)

9700  
RECORDATION NO. \_\_\_\_\_ FILE & RECORD

SEP 21 1978 - 1 00 PM

INTERSTATE COMMERCE COMMISSION

FLATCAR LEASE AGREEMENT

This Lease Agreement made as of the 1st day of September, 1978, between Itel Corporation, Rail-Intermodal Division, a Delaware corporation (hereinafter referred to as "Itel Rail"), and Providence and Worcester Company, a Delaware corporation (hereinafter referred to as "Lessee").

1. Scope of Agreement

A. Itel Rail agrees to lease to Lessee, and Lessee agrees to lease from Itel Rail, freight cars as set forth in any lease schedules executed by the parties concurrently herewith or hereafter and made a part of this Agreement. The word "Schedule" as used herein includes the Schedule or Schedules executed herewith and any additional Schedules and amendments thereto, each of which when signed by both parties shall be a part of this Agreement. The scheduled items of equipment are hereinafter called collectively the "Cars."

B. It is the intent of the parties to this Agreement that Itel Rail shall at all times be and remain the lessor of all Cars. Lessee agrees that it will at no time take any action or file any document which is inconsistent with the foregoing intent and that it will take such action and execute such documents as may be necessary to accomplish this intent.

2. Term

A. This Agreement shall remain in full force until it shall have been terminated as to all of the Cars as provided herein. The term of lease with respect to all of the Cars described on each Schedule shall be for fifteen (15) years (the "Initial Lease Term") commencing upon the date when all Cars on such Schedule have been delivered as set forth in Section 3A hereof.

B. If this Agreement has not been earlier terminated and no default has occurred and is continuing, it shall automatically be extended for consecutive periods of twelve months each (the "Extended Lease Term") with respect to all of the Cars described on each Schedule, provided, however, that Itel Rail may, at the end of the initial term and any extended terms and at its sole option, elect to substitute for any such Cars, cars substantially equivalent to such Cars and, provided further, that Lessee may terminate this Agreement as to all, but not fewer than all, of the Cars on any such Schedule by written notice delivered to Itel Rail not less than twelve months prior to the end of the initial term or any extended lease term. The total period of the combined initial term and all extended terms shall not exceed the then current life allowed by governmental regulations for a car in interchange service at the time of expiration of the initial term of the Agreement and its extensions.

### 3. Supply Provisions

A. Itel Rail will inspect each of the Cars tendered by the manufacturer for delivery to Lessee. Prior to such inspection, however, Lessee shall confirm in writing to Itel Rail that the sample Car which will be made available for Lessee's inspection prior to the commencement of deliveries conforms to the specifications of the equipment agreed to by Lessee. Upon such approval by Lessee and Itel Rail's determination that the Car conforms to the specifications ordered by Itel Rail and to all applicable governmental regulatory specifications, and provided this Agreement has not been terminated, Itel Rail will accept delivery thereof at the manufacturer's facility and shall notify Lessee in writing of such acceptance. Each of the Cars shall be deemed delivered to Lessee upon acceptance by Itel Rail. The Cars shall be moved to Lessee's railroad line at no cost to Lessee as soon after acceptance of delivery by Itel Rail as is consistent with mutual convenience and economy. Due to the nature of railroad operations in the United States, Itel Rail can neither control nor determine when the Cars leased hereunder will actually be available to Lessee for its use on its railroad tracks. Notwithstanding that Lessee may not have immediate physical possession of the Cars leased hereunder, Lessee agrees to pay Itel Rail the rent set forth in this Agreement. To move the Cars to Lessee's railroad line and insure optimal use of the Cars after the first loading of freight for each Car on the railroad line of Lessee (the "Initial Loading"), Itel Rail agrees to assist Lessee in monitoring Car movements and, when deemed necessary by Lessee and Itel Rail, to issue movement orders with respect to such Cars to other railroad lines in accordance with ICC and AAR interchange agreements and rules. If Lessee notifies Itel Rail that it requires the use of a designated quantity of Cars, Itel Rail shall route such Cars toward Lessee.

B. Lessee agrees that so long as it shall have on lease any Cars, it shall not lease similar equipment from any other party (with exception of Cotco) until it shall have received all of the Cars on the Schedule or Schedules. Once the Cars have been delivered to Lessee, it shall then not lease similar Cars from any other party (with exception of Cotco) until it shall have given Itel Rail at least three (3) months' prior written notice of its desire to lease equipment similar to the type on lease. Itel Rail shall then have the opportunity to procure and lease such equipment to Lessee subject to the terms and conditions of this Agreement and manufacturers' delivery schedules and at terms not less favorable to Lessee than those offered by such other parties. Lessee shall throughout the term of the Agreement provide such opportunity to Itel Rail, unless Itel Rail shall have previously been notified in writing of Lessee's intention to lease equipment similar to the type on lease from Itel Rail and Itel Rail shall have failed to offer to Lessee, within three (3) months, terms not less favorable to Lessee than those under which Lessee shall have subsequently leased fifty (50) or more Cars from another party. The foregoing, however, shall not be deemed to prohibit Lessee from leasing from other parties if Itel Rail does not offer lease terms equal to or better than those offered by such other parties. To the extent permitted by law, Lessee shall give equal and joint preference to Cotco and Itel Rail, and shall load the equipment leased from Cotco and Itel Rail prior to loading similar equipment leased from other parties, leased or purchased by Lessee subsequent to the date of this Agreement, or interchanged with railroads; provided, however, that this shall in no event prevent or prohibit Lessee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor. Wherever, Cotco is used in this Agreement it shall be deemed to apply to Cotco Leasing Co. a Delaware corporation.

C. If Lessee desires to lease additional Cars from Cotco, Lessee will give Itel Rail thirty (30) days notice and the right to provide 50 percent of the additional equipment of the same type, from the same manufacturer, and under the terms of this Agreement.

D. Additional Cars may be leased from Itel Rail by Lessee only upon the mutual agreement of the parties hereto. Upon such agreement, such additional Cars shall be identified in Schedules to this Agreement and shall benefit from and be subject to this Agreement upon execution of the Schedules by Itel Rail and Lessee. Notwithstanding the execution of any Schedules, including Schedules for additional Cars, the delivery of any Cars to Lessee shall be subject to manufacturer's delivery schedule, and the mutual acknowledgment of the parties that the addition of such Cars is not likely to reduce Utilization of all Cars on lease to Lessee to less than the applicable Minimum Per Cent as defined in Section 6A(vi) in any calendar quarter. If fewer than all of the Cars listed on a Schedule shall be delivered to Lessee, the term of the Agreement as applied to any group of Cars shall be deemed to have commenced on the date the final Car of such group was delivered to Lessee.

#### **4. Railroad Markings and Record Keeping**

A. Itel Rail and Lessee agree that on or before delivery of any Cars to Lessee, said Cars will be lettered with the railroad markings of Lessee and may also be marked with the name and/or other insignia used by Lessee. Such name and/or insignia shall comply with all applicable regulations.

B. At no cost to Lessee, Itel Rail shall during the term of this Agreement prepare for Lessee's signature and filing all documents relating to the registration and maintenance functions involving the Cars. Such documents shall include but are not limited to the following: (i) appropriate AAR documents; (ii) registration in the Official Railway Equipment Register and the Universal Machine Language Equipment Register; and (iii) such reports as may be required from time to time by the ICC and/or other regulatory agencies.

C. Itel Rail shall, if notified by Lessee pursuant to Section 13, perform all record keeping functions related to the use of the Cars by Lessee and other railroads in accordance with AAR railroad interchange agreements and rules, such as car hire reconciliation. Correspondence from railroads using such Cars shall be addressed to Lessee at such address as the party maintaining the records shall select.

D. All record keeping and car accounting hereunder shall be performed by Lessee unless Lessee elects, pursuant to Section 13, to have Itel Rail perform such record keeping. The car accounting, all record of payments, charges and correspondence related to the Cars shall be separately recorded and maintained by Lessee or Itel Rail, as the case may be, in a form suitable for reasonable inspection by the other from time to time during regular business hours of the party maintaining such records. Lessee shall supply Itel Rail with such information regarding the use of the Cars by Lessee on its railroad line as Itel Rail may reasonably request including, if requested by Itel Rail, daily information as to the number of Cars on Lessee's tracks..

#### **5. Maintenance, Taxes and Insurance**

A. Lessee shall inspect all Cars interchanged to it to insure that such Cars are in good working order and condition and shall be liable to Itel Rail for any repairs required for damage not noted at the time of interchange.

B. Itel Rail shall make or cause to be made such inspections of, and maintenance and repairs to, the Cars as may be required and Lessee will reimburse Itel Rail therefore pursuant to Section 5F. Upon request of Itel Rail, Lessee shall perform at its own expense any necessary maintenance and repairs to Cars on Lessee's railroad tracks as may be reasonably requested by Itel Rail. Lessee may make running repairs to facilitate continued immediate use of a Car, but shall not otherwise make any repairs, alterations, improvements or additions to the Cars without Itel Rail's prior written consent. If Lessee makes an alteration, improvement or addition to any Car without Itel Rail's prior written consent, Lessee shall be liable to Itel Rail for any revenues lost due to such alteration. Title to any such alteration, improvement or addition shall be and remain with Itel Rail.

C. Lessee will at all times while this Agreement is in effect be responsible for the Cars while on Lessee's railroad tracks in the same manner that Lessee is responsible under Rule 7 of the AAR Code of Car Service Rules—Freight for cars not owned by Lessee on Lessee's railroad tracks. Lessee shall protect against the consequences of an event of loss involving the Cars while on Lessee's railroad tracks by either obtaining insurance or employing other means of protection reasonably acceptable to Itel Rail, including self insurance. If Lessee elects to carry insurance, it shall furnish itel Rail concurrently with the execution hereof and thereafter at intervals of not more than 12 calendar months with a certificate of insurance with respect to the insurance carried on the Cars signed by an independent insurance broker. All insurance shall be taken out in the name of Lessee and Itel Rail (or its assignee) as their interest may appear.

D. Except as provided in Section 5E Lessee shall, unless it shall have given notice to Itel Rail pursuant to Section 13, pay all taxes, assessments and other governmental charges of whatsoever kind or character relating to each Car and on the lease, delivery or operation thereof which may remain unpaid as of the date of delivery of such Car to Lessee or which may be accrued, levied, assessed or imposed during the term of this Agreement and sales or use taxes imposed on the mileage charges and/or car hire revenues. Itel Rail shall forward to Lessee all sales and use tax payments received by it on behalf of Lessee. Itel Rail and Lessee will comply with all state and local laws requiring the filing of ad valorem tax returns on the Cars. Itel Rail shall review all applicable tax returns prior to filing.

E. In the event that assessments by the United States government or agencies thereof are levied upon the Cars based upon their usage in order to provide funds for facilities or services for the railroad industry at large (such as government sponsored improvements to rights of way), the burden represented by such levying upon the Cars shall be borne by Itel Rail and Lessee in proportions as follows: Itel Rail shall pay a portion equal to the Minimum Per Cent as defined in Section 6A (vi) and Lessee shall pay the remainder.

F. Lessee shall, unless it shall have given notice to Itel Rail pursuant to Section 13: (1) during the initial term, reimburse Itel Rail for all net costs, expenses, fees and charges incurred by Itel Rail subsequent to the initial loading in the performance of its obligations set forth in Section 5B, (2) during any extended lease term, Lessee shall reimburse Itel Rail for 50 percent of such net costs. Reimbursement of such expenses shall be made to Itel Rail within 30 days after Lessee's receipt of supporting documentation.

G. All records of payments, charges and correspondence related to the Cars shall be separately recorded and maintained by Itel Rail in a form suitable for reasonable inspection by Lessee from time to time during regular Itel Rail business hours to assure that charges paid by Itel Rail for the Cars are reasonable. Further, to the extent that Lessee performs maintenance to the Cars, and other freight cars owned by Itel Rail, it shall be treated equivalently with other parties providing such maintenance, for purposes of determining amounts and timing of payments and fixing of responsibility for quality and timeliness of repairs.

H. In the event that subsequent to the delivery of the first Car pursuant to the terms of this Lease Agreement, the Car Hire Rate Table as specified in "The Official Railway Equipment Register" applicable to the Cars is increased over the rate existing at the time of delivery of such first Car for charge per line-haul and/or daily time charge, and Lessee shall not have exercised its option under Section 13 of the Agreement, all such increases payable to Itel Rail under the terms of this Lease Agreement shall be accounted for separately by Itel Rail (such funds are hereinafter collectively referred to as "contingency funds" as follows:

(i) If under Section 6 of this Agreement, the mileage computed is less than 225 miles per day, or Utilization shall be less than the appropriate Minimum Per Cent, or both, Itel Rail will look initially to the contingency funds for any payment of amounts due by Lessee under Section 6C.

(ii) If after payments of amounts due under Subsection (i) there are contingency funds remaining, then so long as Lessee is responsible under Section 5F herein to reimburse Itel Rail, Itel Rail will look initially to the remaining contingency funds for such reimbursement.

(iii) If Lessee elects its option pursuant to Section 13 of this Lease Agreement, no further payments will be credited to the contingency funds, and any credit remaining in the contingency funds will become the property of Itel Rail.

## 6. Lease Rental

A. Lessee agrees to pay the following rent to Itel Rail for the use of the Cars:

(i) Itel Rail shall receive all payments made to Lessee by other railroad companies for their use or handling of the Cars, including but not limited to mileage charges, and car hire payments (both of which payments made to Lessee are hereinafter collectively referred to as "Payments") if the Utilization of all of the Cars delivered to Lessee on an aggregate basis for each calendar year shall be equal to or less than the Minimum Per Cent as defined in Section 6A (vi) and the average daily mileage travelled by each of the Cars for which mileage payments are made to Lessee ("the average mileage") is equal to or less than 225 miles per day. For the purpose of this Agreement, Utilization of the Cars shall be determined by a fraction, the numerator of which is the aggregate number of days in each calendar year that payments are earned by Lessee on the Cars, commencing from the Initial Loading, and the denominator of which is the aggregate number of days in each calendar year that the Cars are on lease to Lessee, less the aggregate days that the Cars are not on Lessee's tracks and not earning payments for any reason, except repair not related to damage beyond repair or destruction, commencing from the Initial Loading (such term referred to as "Utilization"). In addition, Itel Rail will receive, as additional rental, all monies earned by the Cars prior to the Initial Loading.

(ii) In the event Utilization exceeds the Minimum Per Cent in any calendar year and the average mileage is more than 225, Itel Rail shall receive an amount equal to the Itel Rail Base Rental plus an amount equal to one-half of the Payments earned in excess of the Itel Rail Base Rental. For the purpose hereof, Itel Rail Base Rental shall be an amount equal to the total Payments for the calendar year multiplied by a fraction, the numerator of which is the Base Per Cent as defined in Section 6A (vii) and the denominator of which is the Utilization for such calendar year. (The above determination of Itel Rail Base Rental insures that Lessee will, if Utilization is greater than the Minimum Per Cent as defined in Section 6A (vi) in any calendar year, receive one-half of all the payments made by other railroads for use or handling of the Cars in excess of the Itel Rail Base Rental.)

(iii) If during the initial term Itel Rail pays other railroads to move Cars in accordance with Section 3A, except for any payments incurred to deliver such Cars to Lessee's railroad line, Lessee shall reimburse Itel Rail for such payments only from and out of the monies received by Lessee pursuant to subsection 6A (ii). During any extended lease term such costs shall be borne equally Itel Rail and Lessee.

(iv) The rental charges payable to Itel Rail by Lessee shall be paid from the payments received by Lessee in the following order until Itel Rail receives the amounts due it pursuant to this section: (1) straight car hire payments; (2) mileage charges; (3) other.



(v) In the event damage beyond repair or destruction of a Car has been reported in accordance with Rule 7 of the AAR Code of Car Hire Rules and Interpretations—Freight and the appropriate amount due as a result thereof is received by Itel Rail, said damaged or destroyed Car will be removed from the coverage of this Agreement as of the date that payment of car hire payments ceased.

(vi) The "Minimum Per Cent" with respect to the years set forth below shall be:

(a) During the initial term, the Minimum Per Cent shall be 87.5 percent.

(b) During any extended lease term, the Minimum Per Cent shall be 49.9 percent.

(vii) The "Base Per Cent" with respect to the years set forth below shall be:

(a) During the first five (5) years of the initial term, the Base Per Cent shall be 87.5 percent.

(b) During the succeeding five (5) years of the initial term, the Base Per Cent shall be 75.0 percent.

(c) During the succeeding five (5) years of the initial term, the Base Per Cent shall be 60.0 percent.

(d) During any extended lease term, the Base Per Cent shall be zero percent.

B. The calculations required above shall be made within five (5) months after the end of each calendar year. However, since the parties desire that rental payments shall be made currently so that Itel Rail may meet its financial commitments, Lessee shall prepare and deposit drafts or other payment forms covering car rentals in Lessee's bank by the 25th of each month. Lessee shall then pay to Itel Rail by the 30th of each month 85 per cent of the total Payments earned by the Cars for the usage reported in the current month by other railroads including actual car mileage earnings when available or estimated earnings based on 225 miles per day per Car. At the time the month's first remittance is made, Lessee shall report for the same month, the dollar figure for 100 per cent of the revenue earned. Ten percent of the total car hire revenue shall be remitted to Itel Rail thirty (30) days or one month after the initial monthly payment and the remaining five per cent shall be remitted to Itel Rail sixty (60) days or two months after the initial payment. Since the parties desire to adjust the amounts paid pursuant to the above more frequently than at the end of each calendar year, Itel Rail shall within three (3) months after the end of each calendar quarter, calculate on a cumulative quarterly basis, the appropriate amount of rental payment due it. Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculations, provided, however, that following each cumulative quarterly calculation, any amount paid to either party in excess of the amounts required by such quarterly calculations shall be promptly refunded to the appropriate party.

C. If at any time during any calendar quarter during the term of this Agreement, it becomes mathematically certain that the Utilization (for purposes of this section the denominator of the Utilization calculation shall exclude the aggregate car days during which the Cars are not on Lessee's railroad tracks and not earning payments for any reason whatsoever) cannot be equal to or greater than the appropriate Minimum Per Cent, Itel Rail may, at its option and upon not less than 10 days prior written notice to Lessee, terminate this Agreement as to such Cars as Itel Rail shall determine unless Lessee shall, (i) within 5 days of Itel Rail written notice, notify Itel Rail of its intent to pay Itel Rail an amount equal to the difference between the rent Itel Rail received for such calendar quarter and the rent Itel Rail would have received had the Utilization been the appropriate Minimum Per Cent (and the average mileage had been 225) and (ii) make such payment within 15 days of receipt of such notice.

D. Itel Rail may, at its option, terminate this Agreement if the ICC shall, at any time, require that Lessee spend funds not earned by the Cars in order for Lessee to continue to meet its obligations set forth in this section.

E. If any Car remains on Lessee's railroad tracks more than seven consecutive days because Lessee has not given preference to the Cars as specified in section 3B, Lessee shall be liable for and remit to Itel Rail an amount equal to the Payments Lessee would have earned if such Cars were in the physical possession and use of another railroad for the entire period and had traveled an average of 225 miles per day per Car.

## 7. Possession and Use

A. So long as Lessee shall not be in default under this Agreement, Lessee shall be entitled to the possession, use and quiet enjoyment of the Cars in accordance with the terms of this Agreement and in the manner and to the extent Cars are customarily used in the railroad freight business, provided that Lessee retain on its railroad tracks no more Cars than are necessary to fulfill its immediate requirements to provide transportation and facilities upon reasonable request therefor to shippers on its railroad tracks.

B. Lessee's rights shall be subject and subordinate to the rights of any owner or secured party under any financing agreements entered into by Itel Rail in connection with the acquisition of Cars ("Financing Agreements") i.e., upon notice to lessee from any such secured party or owner that an event of default has occurred and is continuing under such Financing Agreements, such party may require that all rent be made to such party and/or that the Cars be returned to such party. Itel Rail acknowledges that any interruption in Lessee's possession, use and quiet enjoyment of the Cars during the term of this Agreement and any extension thereof can adversely affect Lessee's ability to provide transportation and facilities to shippers on its railroad tracks and accordingly Itel Rail will:

(i) Notify any and all owners or secured parties involved in Financing Agreements of Lessee's interest in and desire for uninterrupted possession, use and quiet enjoyment of the Cars,

(ii) Provide Lessee with a copy of all Financing Agreements and any changes and additions thereto,

(iii) Notify Lessee promptly upon its awareness of the existence of any condition which can with the passage of time, become an event of default by Itel Rail under any Financing Agreements, and

(iv) Assist Lessee and any owner or secured party involved in Financing Agreements in any manner that may be reasonably requested by these parties to make such formal or informal arrangements as may be desired to minimize interruptions in Lessee's business that could reasonably be expected to result from a default by Itel Rail under the Financing Agreements.

C. Lessee agrees that to the extent that it has physical possession and can control use of the Cars, the Cars will at all times be used and operated under and in compliance with the laws of the jurisdiction in which the same may be located and in compliance with all lawful acts, rules and regulations and orders of any governmental bodies or officers having power to regulate or supervise the use of such property, except that either Itel Rail or Lessee may in good faith and by appropriate proceedings contest the application of any such rule, regulation or order in any reasonable manner at the expense of the contesting party.

D. Lessee will not directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or other security interest or claim on or with respect to the Cars or any interest therein or in this Agreement or Schedules thereto. Lessee will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, security interest or claim if the same shall arise at any time.

## 8. Default

A. The occurrence of any of the following events shall be an Event of Default:

(i) The nonpayment by Lessee of any sum required herein to be paid by Lessee within ten days after the date any such payment is due.

(ii) The breach by Lessee of any other term, covenant or condition of this Agreement, which is not cured within ten days thereafter.

(iii) Any act of insolvency by Lessee, or the filing by Lessee of any petition of action under any bankruptcy, reorganization, insolvency or moratorium law, or any other law or laws for the relief of, or relating to, debtors.

(iv) The filing of any involuntary petition under any bankruptcy, reorganization, insolvency or moratorium law against Lessee that is not dismissed within sixty (60) days thereafter, or the appointment of any receiver or trustee to take possession of the properties of Lessee, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within sixty (60) days from the date of said filing or appointment.

(v) The subjection of any of Lessee's property to any seizure, assignment, application or sale for or by any creditor, or governmental agency, that will in any way effect Lessee's ability to perform its obligations under this Agreement.

(vi) Any action by Lessee to discontinue rail service on all or a substantial portion of its tracks or abandon all or a substantial portion of its rail properties pursuant to applicable provisions of the Interstate Commerce Act or the laws of any state.

B. Upon the occurrence of any event of default, Itel Rail may, at its option, terminate this Agreement and may

(i) proceed by any lawful means to enforce performance by Lessee of this Agreement or to recover damages for a breach thereof, or

(ii) by notice in writing to Lessee, terminate Lessee's right of possession and use of the Cars, whereupon all right and interest of Lessee in the Cars shall terminate; and thereupon Itel Rail may enter upon any premises where the Cars may be located and take possession of them and henceforth hold, possess and enjoy the same free from any right of Lessee. Itel Rail shall nevertheless have the right to recover from Lessee any and all rental amounts which under the terms of this Agreement may then be due or which may have accrued to that date.

## **9. Termination**

Upon the termination of this Agreement as to any Cars, Lessee will surrender possession of such Cars to Itel Rail by delivering the same to Itel Rail. A Car shall be no longer subject to this Agreement upon the removal of Lessee's railroad markings from the Car and the placing thereon of such markings as may be designated by Itel Rail, either, at the option of Itel Rail, (1) by Lessee upon return of such Cars to Lessee's railroad line or (2) by another railroad line, at Lessee's expense, which has physical possession of the Car at the time of or subsequent to termination of the lease term as to such Car. If such Cars are not on the railroad line of Lessee upon termination, any cost of assembling, delivering, storing, and transporting such Cars to Lessee's railroad line or the railroad line of a subsequent lessee shall be borne by Itel Rail. If such Cars are on the railroad line of Lessee upon such expiration or termination or are subsequently returned to Lessee's railroad line, Lessee shall at its own expense within five working days remove Lessee's railroad markings from the Cars and place thereon such markings as may be designated by Itel Rail. After the removal and replacement of markings, Lessee shall use its best efforts to load such Cars with freight and deliver such Cars to a connecting carrier for shipment. Lessee shall provide up to thirty (30) days free storage on its railroad tracks for Itel Rail or the subsequent lessee of any terminated Car. If any Car is terminated pursuant to subsection 6C or 6E or section 8 prior to the end of its lease term, Lessee shall be liable to Itel Rail for all costs and expenses incurred by Itel Rail to repaint the Cars and place thereon the markings and name or other insignia of Itel Rail's subsequent lessee.

## **10. Indemnities**

Itel Rail will defend, indemnify and hold Lessee harmless from and against (1) any and all loss or damage of or to the Cars, usual wear and tear excepted, unless occurring while Lessee has physical possession of the Cars and (2) any claim, cause of action, damage, liability, cost or expense which may be asserted against Lessee with respect to the Cars other than loss or physical damage (unless occurring as a result of the actual negligence of Lessee), including without limitation the construction, purchase and delivery of the Cars to Lessee's railroad line, ownership, leasing or return of the Cars, or as a result of the use, maintenance, repair, replacement, operation or the condition thereof (whether or not defects exist and whether or not defects, if any, are latent or are discoverable by Itel Rail or Lessee).

## **11. Representations, Warranties and Covenants**

A. Lessee represents, warrants and covenants that:

(i) Lessee is a corporation duly organized, validly existing and in good standing under the laws of the state where it is incorporated and has the corporate power, authority and is duly qualified and authorized to do business wherever necessary, to carry out its present business and operations and to own or hold under lease its properties and to perform its obligations under this Agreement.

(ii) The entering into and performance of this Agreement will not violate any judgment, order, law or regulation applicable to Lessee, or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Lessee or on the Cars pursuant to any instrument to which Lessee is a party or by which it or its assets may be bound.

(iii) There is no action or proceeding pending or threatened against Lessee before any court or administrative agency or other governmental body which might result in any material adverse effect on the business, properties and assets, or conditions, financial or otherwise, of Lessee, except as disclosed in Lessee's financial statements.

(iv) There is no fact which Lessee has not disclosed to Itel Rail in writing, nor is Lessee a party to any agreement or instrument or subject to any charter or other corporate restriction which, so far as the Lessee can now reasonably foresee, will individually or in the aggregate materially adversely affect the business, condition or any material portion of the properties of the Lessee or the ability of the Lessee to perform its obligations under this Agreement, except as disclosed in Lessee's financial statements.

B. Itel Rail represents, warrants and covenants that:

(i) The entering into and performance of this Agreement or any previous agreements between Itel Rail and Lessee will not result in the creation of any lien, charge, security interest, or other encumbrance upon any assets of Lessee other than rent which has been earned by Itel Rail but which has not been disbursed by Lessee pursuant to the terms of this Agreement.

(ii) Any demurrage payments received or receivable for Cars leased pursuant to the terms of this Agreement will remain the sole property of Lessee and will not be included in any calculation of rental charges or other payments due to, or to be shared with, Itel Rail.

## 12. Inspection

Itel Rail shall at any time during normal business hours have the right to enter the premises where the Cars may be located for the purpose of inspecting and examining the Cars to insure Lessee's compliance with its obligations hereunder. Lessee shall immediately notify Itel Rail of any accident connected with the malfunctioning or operation of the Cars, including in such report the time, place and nature of the accident and the damage caused, the names and addresses of any persons injured and of witnesses, and other information pertinent to Lessee's investigation of the accident. Lessee shall also notify Itel Rail in writing within five (5) days after any attachment, tax lien or other judicial process shall attach to any Car. Lessee shall furnish to Itel Rail promptly upon its becoming available, a copy of its annual report submitted to the ICC and, when requested, copies of any other income or balance sheet statements required to be submitted to the ICC.

## 13. Lessee Election

Lessee may, at its sole option, elect to have Itel Rail perform all car accounting and pay, without reimbursement from Lessee, for all taxes, and maintenance as specified in Section 5 and for any reasonable insurance expenses relating to the Cars excluding public liability insurance. Such election, in whole or in part, shall be effective 90 days following notice by Lessee ("Effective Date"). Based upon the Effective Date the following shall apply:

A. If the Effective Date occurs before the fifth anniversary date of the initial term, the Base Per Cent will be set equal to 90 percent for the remainder of the initial term and any extended lease term and the Minimum Per Cent will be set equal to 87.5 percent for any extended lease term.

B. If the Effective Date occurs after the fifth anniversary date of the initial term and before the expiration of the initial term, the Base Per Cent will be set equal to 90 percent for the remainder of the initial term. The Base Per Cent applicable to any extended lease term shall be increased by four (4) percent for each year (including the current year) remaining in the initial term as of the Effective Date.

C. If the Effective Date occurs after expiration of the initial term, the Base Per Cent shall be set equal to 90 percent and the Minimum Per Cent shall be set equal to 87.5 percent for any remaining extended lease term.

D. If pursuant to this Section 13 Lessee exercises its option, and subsequent to the Effective Date property taxes are assessed against the Cars by a state or subdivision thereof, Itel Rail may, at its option and upon not less than 10 days prior written notice to Lessee, terminate this Agreement as to such Cars as Itel Rail shall determine unless Lessee shall within 5 days of Itel Rail's written notice, notify Itel Rail of its intent to pay such tax and thereafter pay such tax promptly to the appropriate tax authority.

#### 14. Miscellaneous

A. Itel Rail and Lessee agree that, as between themselves, Lessee shall be entitled to claim the benefits on any available Investment Tax Credit for Federal Income Tax purposes in accordance with the Internal Revenue Code and the regulations promulgated thereunder in connection with the acquisition of the Cars in this Agreement. Such cars shall be new equipment when delivered to Lessee hereunder and Itel Rail agrees to execute such documents as may be required to permit Lessee to claim any Investment Tax Credits relating to such Cars. This subparagraph A shall not apply to Cars bearing numbers 105001 - 105050 and 105201 - 105300 in attached Equipment Schedules 1 and 3 attached hereto.

B. This Agreement and the Schedules contemplated hereby shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, except that Lessee may not without the prior written consent of Itel Rail assign this Agreement or any of its rights hereunder or sublease the Cars to any party, and any purported assignment or sublease in violation hereof shall be void.

C. Both parties agree to execute the documents contemplated by this transaction and such other documents as may be required in furtherance of this Agreement and in furtherance of any financing agreement entered into by Itel Rail in connection with the acquisition of the Cars in order to confirm the financing party's interest in and to the Cars, this Agreement and Schedules hereto and to confirm the subordination provisions contained in Section 7.

D. It is expressly understood and agreed by the parties hereto that this Agreement constitutes a lease of the Cars only and no joint venture or partnership is being created. Notwithstanding the calculation of rental payments, nothing herein shall be construed as conveying to Lessee any right, title or interest in the Cars except as a Lessee only.

E. No failure or delay by either party herein shall constitute a waiver or otherwise affect or impair any right, power or remedy available, except as otherwise provided herein; nor shall any waiver or indulgence by either party or any partial or single exercise of a right, power or further exercise of any other right, power or remedy, except as otherwise provided for herein.

F. This Agreement shall be governed by and construed according to the laws of the State of California.

G. All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the United States mail, postage prepaid, certified or registered, addressed to the president of the other party at the address set forth above.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

ITEL CORPORATION, RAIL-INTERMODAL  
DIVISION

By: 

Title: President

Date: September 7, 1978

PROVIDENCE AND WORCESTER  
COMPANY

By: 

Title: President

Date: September 7, 1978

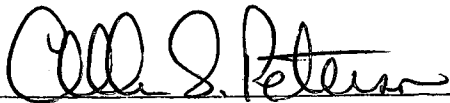
# EQUIPMENT SCHEDULE No. 1

Itel Corporation, Rail-Intermodal Division hereby leases the following equipment to Providence and Worcester Company subject to the terms and conditions of that certain Lease Agreement dated as of September 1, 1978.

Description	Reporting Marks and Numbers	Inside Dimensions			Type of Door	Type of Suspension	No of Items of Equipment
		Length	Width	Height			
FC 70-ton flush deck flatcars for trailer and container service	PW 105001-105100	89'	N/A	N/A	N/A	N/A	100
Equipment to be delivered in 1978.							

ITEL CORPORATION, RAIL-INTERMODAL DIVISION

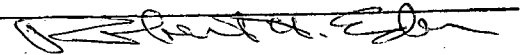
BY:



TITLE: President

DATE: September 7, 1978

BY: PROVIDENCE AND WORCESTER COMPANY



TITLE: President

DATE: September 7, 1978



*Wells Fargo*

EQUIPMENT SCHEDULE No.2

IteI Corporation, Rail-Intermodal Division hereby leases the following equipment to Providence and Worcester Company subject to the terms and conditions of that certain Lease Agreement dated as of September 1, 1978.

Description	Reporting Marks and Numbers	Inside Dimensions			Type of Door	Type of Suspension	No of Items of Equipment
		Length	Width	Height			
FC 70-ton flush deck flatcars for trailer and container service	PW 105101- 105200	89'	N/A	N/A	N/A	N/A	100
Equipment to be delivered in 1978.							

ITEL CORPORATION, RAIL-INTERMODAL DIVISION

BY: *Bill S. Peterson*

TITLE: President

DATE: September 7, 1978

BY: PROVIDENCE AND WORCESTER COMPANY  
*Robert A. Egan*

TITLE: President

DATE: September 7, 1978

EQUIPMENT SCHEDULE No. 3

Itel Corporation, Rail-Intermodal Division hereby leases the following equipment to Providence and Worcester Company subject to the terms and conditions of that certain Lease Agreement dated as of September 1, 1978.

Description	Reporting Marks and Numbers	Inside Dimensions			Type of Door	Type of Suspension	No of Items of Equipment
		Length	Width	Height			
FC 70-ton flush deck flatcars for trailer and container service	105201- 105300	89'	N/A	N/A	N/A	N/A	100
Equipment to be delivered in 1978.							

ITEL CORPORATION, RAIL-INTERMODAL DIVISION

BY:

Allen S. Peterson

TITLE: President

DATE: September 7, 1978

BY: PROVIDENCE AND WORCESTER COMPANY

Frank H. Eden

TITLE: President

DATE: September 7, 1978

# EQUIPMENT SCHEDULE No.4

Itel Corporation, Rail-Intermodal Division hereby leases the following equipment to Providence and Worcester Company subject to the terms and conditions of that certain Lease Agreement dated as of September 1, 1978.

Description	Reporting Marks and Numbers	Inside Dimensions			Type of Door	Type of Suspension	No of Items of Equipment
		Length	Width	Height			
FC 70-ton flush deck flat cars for trailer and container service	PW 105301- 105400	89'	N/A	N/A	N/A	N/A	100
Equipment to be delivered in 1978.							

ITEL CORPORATION, RAIL-INTERMODAL DIVISION

BY: Allen S. Peterson

TITLE: President

DATE: September 7, 1978

BY: PROVIDENCE AND WORCESTER COMPANY  
Robert A. E. Dr.

TITLE: President

DATE: September 7, 1978

# EQUIPMENT SCHEDULE No.5

Itel Corporation, Rail-Intermodal Division hereby leases the following equipment to Providence and Worcester Company subject to the terms and conditions of that certain Lease Agreement dated as of September 1, 197<sup>8</sup>.

Description	Reporting Marks and Numbers	Inside Dimensions			Type of Door	Type of Suspension	No of Items of Equipment
		Length	Width	Height			
FC 70-ton flush deck flatcars for trailer and container service	PW 105401- 105500	89'	N/A	N/A	N/A	N/A	100
Equipment to be delivered in 1978 or first quarter 1979.							

ITEL CORPORATION, RAIL-INTERMODAL DIVISION

BY: Allen S. Petersen

TITLE: President

DATE: September 7, 1978

BY: PROVIDENCE AND WORCESTER COMPANY  
Robert H. Edson

TITLE: President

DATE: September 7, 1978

# EQUIPMENT SCHEDULE No.6

Itel Corporation, Rail-Intermodal Division hereby leases the following equipment to  
Providence and Worcester Company subject to the terms and  
 conditions of that certain Lease Agreement dated as of September 1, 1978.

Description	Reporting Marks and Numbers	Inside Dimensions			Type of Door	Type of Suspension	No of Items of Equipment
		Length	Width	Height			
FC 70-ton flush deck flatcars for trailer and container service	PW 105501- 105600	89'	N/A	N/A	N/A	N/A	100
Equipment to be delivered in 1978 or first quarter 1979.							

ITEL CORPORATION, RAIL-INTERMODAL DIVISION

BY:

Allen S. Peterson

TITLE: President

DATE: September 7, 1978

BY: PROVIDENCE AND WORCESTER COMPANY

[Signature]

TITLE: President

DATE: September 7, 1978

# EQUIPMENT SCHEDULE No. 7

Itel Corporation, Rail-Intermodal Division hereby leases the following equipment to Providence and Worcester Company subject to the terms and conditions of that certain Lease Agreement dated as of September 1, 1978.

Description	Reporting Marks and Numbers	Inside Dimensions			Type of Door	Type of Suspension	No of Items of Equipment
		Length	Width	Height			
FC 70-ton flush deck flatcars for trailer and container service	PW 105601- 105700	89'	N/A	N/A	N/A	N/A	100
Equipment to be delivered in 1978 or first half of 1979.							

ITEL CORPORATION, RAIL-INTERMODAL DIVISION

BY:



TITLE:

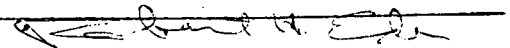
President

DATE:

September 7, 1978

BY:

PROVIDENCE AND WORCESTER COMPANY



TITLE:

President

DATE:

September 7, 1978

# EQUIPMENT SCHEDULE No. 8

Itel Corporation, Rail-Intermodal Division hereby leases the following equipment to Providence and Worcester Company subject to the terms and conditions of that certain Lease Agreement dated as of September 1, 1978.

Description	Reporting Marks and Numbers	Inside Dimensions			Type of Door	Type of Suspension	No of Items of Equipment
		Length	Width	Height			
FC 70-ton flush deck flatcars for trailer and container service	PW 105701- 105800	89'	N/A	N/A	N/A	N/A	100
Equipment to be delivered in 1978 or first half of 1979.							

ITEL CORPORATION, RAIL-INTERMODAL DIVISION

BY:

William S. Peterson

TITLE: President

DATE: September 7, 1978

BY: PROVIDENCE AND WORCESTER COMPANY

Robert H. Edson

TITLE: President

DATE: September 7, 1978

STATE OF NEW YORK.....)  
COUNTY OF WESTCHESTER.....)

On this 7th day of September, before me personally appeared Robert H. Eder, to me personally known, who being by me duly sworn says that such person is President of Providence and Worcester Company, that the foregoing Lease Agreement and Equipment Schedule Nos. 1 thru 8 were signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Roberta V. Wittenberg  
Notary Public  
ROBERTA V. WITTENBERG  
Notary Public, State of New York  
No. 31-4602243  
Qualified in New York County  
Qualified in Westchester County  
Commission Expires March 30, 1980

STATE OF NEW YORK.....)  
COUNTY OF WESTCHESTER.....)

On this 7th day of September, before me personally appeared Allen S. Peterson, to me personally known, who being by me duly sworn says that such person is President of ITEL Corporation, Rail-Intermodal Division, that the foregoing Lease Agreement and Equipment Schedule Nos. 1 thru 8 were signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of such corporation.

Roberta V. Wittenberg  
Notary Public  
ROBERTA V. WITTENBERG  
Notary Public, State of New York  
No. 31-4602243  
Qualified in New York County  
Qualified in Westchester County  
Commission Expires March 30, 1980